

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 552

Introduced by Assembly Member O'Donnell

February 23, 2015

An act to add Section 7203 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 552, as amended, O'Donnell. Public works contracts: damages.

Existing law prescribes requirements for contracts between private parties and public entities, as defined.

This bill would ~~require~~ *provide that a public works contract* entered into by a public agency, as defined, on or after January 1, 2016, ~~to provide that damages recoverable from a nonperforming party be liquidated and specified in the contract, to provide that liquidated damages not be disproportionate to potential actual consequential and provable damages, and to not require that a contractor be responsible for consequential damages unless those damages have been liquidated to a set amount, as provided.~~ *that contains a clause requiring a contractor to be responsible for consequential damages is not enforceable unless the consequential damages have been liquidated to a set amount and identified in the public works contract.* The bill would also make findings and declarations related to public contracts.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that, as a
2 matter of public policy, it is in the best interest of California
3 taxpayers to ensure uniformity in the bidding and contracting
4 process for public works construction projects within the State of
5 California.

6 (b) The Legislature further finds and declares that contractually
7 imposing undefined and unlimited risk on to public works
8 construction contractors increases public works construction costs
9 because construction contractors must account for the undefined
10 and unlimited risk, which is generally uninsurable, in their bids.

11 (c) It is therefore in the best interest of California taxpayers and
12 public works construction contractors for the Legislature to
13 establish clear guidelines for how liquidated damages and
14 consequential damages are expressed in a public works contract.

15 SEC. 2. Section 7203 is added to the Public Contract Code, to
16 read:

17 ~~7203. (a) Public works contracts entered into by a public~~
18 ~~agency on or after January 1, 2016, shall provide that damages~~
19 ~~recoverable from a nonperforming party shall be liquidated and~~
20 ~~specified in the contract in order to be enforceable against the~~
21 ~~nonperforming party. Liquidated damages shall not be~~
22 ~~disproportionate to potential actual consequential and provable~~
23 ~~damages, otherwise all damages shall not be recoverable against~~
24 ~~the nonperforming party.~~

25 ~~(b) A public agency shall not require a contractor to be~~
26 ~~responsible for consequential damages of any sort unless the~~
27 ~~consequential damages have been liquidated to a set amount and~~
28 ~~identified in a public works contract entered into on or after January~~
29 ~~1, 2016.~~

30 7203. (a) *A public works contract entered into on or after*
31 *January 1, 2016, that contains a clause requiring a contractor to*
32 *be responsible for consequential damages is not enforceable unless*
33 *the consequential damages have been liquidated to a set amount*
34 *and identified in the public works contract.*

35 (e)

36 (b) “Public agency” shall include the state, the Regents of the
37 University of California, a city, charter city, county, charter county,

- 1 district, public authority, ~~public agency~~, municipal utility, and any
- 2 other political subdivision or public corporation of the state.

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